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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No.:
Plaintiff,)	1:22-cr-00233-JLT-SKO
vs.)	
SHANA GAVIOLA,)	
Defendant)	

**MOTION TO DISMISS INDICTMENT FOR PROSECUTORIAL
MISCONDUCT, DUE PROCESS VIOLATIONS, AND DISCOVERY
VIOLATIONS**

Dated: October 3, 2025

Respectfully submitted,

s/George T. Pallas
GEORGE T. PALLAS

**MOTION TO DISMISS INDICTMENT FOR PROSECUTORIAL
MISCONDUCT, DUE PROCESS VIOLATIONS, AND DISCOVERY
VIOLATIONS**

Defendant SHANA GAVIOLA, by and through undersigned counsel, respectfully moves this Court to dismiss the indictment with prejudice pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution, Federal Rules of Criminal Procedure 12(b)(1) and 16, and the Court's inherent supervisory power, based on the government's egregious prosecutorial misconduct, willful discovery violations, and denial of due process.

STATEMENT OF FACTS

1. Defendant has been represented by counsel throughout these proceedings which have spanned approximately three (3) years. Undersigned counsel entered his appearance for the Defendant on July 10, 2025.

2. During the pendency of this case, the lead federal prosecutor who indicted this case, had a chance, out-of-court encounter at a local bar with the Defendant in May 2023. The fact that this encounter occurred, the substance of the conversation, including statements by the Defendant, without counsel present, to the AUSA and, subsequently, at the AUSA's urging, to an FBI Special Agent, were never disclosed in the discovery process. There is a mention of it in a lengthy interview the

1 Defendant had with an online periodical in June of this year that was provided this
2 summer.

3 3. The Defendant, who has been described by at least one government witness
4 as attractive, was seated in the bar. The AUSA entered with a group and were seated.
5 The AUSA saw defendant from afar, smiled, and defendant nervously smiled
6 back. AUSA then leaves his seat and comes to where defendant is seated and asks,
7 “Don’t I know you from somewhere?” Defendant responds: “you have been trying
8 to put me in jail for the last year.” Even after the defendant clearly identified herself,
9 discussion ensues including, *inter alia*, how AUSA learned from discovery where
10 the defendant lives, that their kids go to the same school, and that it is “nothing
11 personal” and that it is okay to talk as long as it is not about the case, etc. Defendant
12 next goes to rest room. AUSA waits outside the restroom with an FBI agent on the
13 phone. The FBI agent was the agent that served a search warrant at the Defendant’s
14 home at gunpoint. When she exits, AUSA hands his phone to Defendant and they
15 talk briefly. Later, AUSA calls the defendant’s then-attorney, hands phone again to
16 Defendant, and they talk.

17 4. Upon learning that the individual was the defendant in this case, the
18 prosecutor engaged in inappropriate conversation with Defendant outside the
19 presence of her counsel, further exacerbating the situation by compelling the
20 Defendant to speak with the FBI agent.
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1 5. The government has willfully concealed these communications from the
2 defense and this Court for the entire two-year pendency of this case. Immediately
3 upon learning of them, counsel requested full disclosure but has yet to receive a
4 response. In a conversation on September, 28, 2025, with the Chief of the Criminal
5 Division, the government agreed only to remove the AUSA from the case but no
6 other remedial action.
7
8

9 6. The extent of these undisclosed communications was only recently discovered
10 by counsel through a telephone conversation with the AUSA on September 27,
11 2025, where he largely corroborated the events.
12

13 LEGAL ARGUMENT

14 **I. THE GOVERNMENT'S *EX PARTE* COMMUNICATIONS WITH** 15 **A REPRESENTED DEFENDANT VIOLATES DUE PROCESS** 16 **AND CONSTITUTES PROSECUTORIAL MISCONDUCT**

17 The prosecution's conduct violates fundamental principles of due process and
18 constitutes egregious prosecutorial misconduct warranting dismissal with prejudice.
19

20 **A. Violation of the Right to Counsel**

21 The Sixth Amendment guarantees that "in all criminal prosecutions, the accused
22 shall enjoy the right... to have the Assistance of Counsel for his defense." Once the
23 right to counsel attaches, the government is *prohibited* from deliberately eliciting
24 statements from a defendant outside the presence of counsel. *Massiah v. United*
25 *States*, 377 U.S. 201 (1964); *Maine v. Moulton*, 474 U.S. 159 (1985); *United States*
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1 v. *Henry*, 447 U.S. 264 (1980). In *United States v. Hammad*, 858 F.2d 834 (2nd Cir.
2 1988), the court emphasized that prosecutors cannot circumvent the attorney-client
3 relationship through direct contact with represented parties. See also *United States*
4 v. *Lopez*, 4 F.3d 1455 (9th Cir. 1993) (prosecutorial contact with represented
5 defendant requires suppression of resulting evidence). Here, the prosecutor's
6 decision to engage in conversations with Defendant after learning her identity, and
7 to further facilitate FBI contact without counsel present, constitutes a deliberate
8 circumvention of Defendant's constitutional right to counsel.
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12 **B. Prosecutorial Misconduct**

13 Federal prosecutors have a duty to ensure that defendants receive a fair trial.
14 *Brady v. Maryland*, 373 U.S. 83 (1963). The Ninth Circuit has been particularly
15 vigilant in addressing prosecutorial misconduct. In *United States v. Kojayan*, 8 F.3d
16 1315 (9th Cir. 1993), the court held that prosecutorial misconduct that undermines
17 fundamental fairness requires dismissal.
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20 The conduct here violates multiple ethical rules:
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- 22 • **ABA Model Rule 4.2:** Prohibiting communication with represented persons
- 23 • **ABA Model Rule 3.3:** Duty of candor to the court
- 24 • **ABA Model Rule 3.8:** Special responsibilities of prosecutors

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26 In *United States v. Friedman*, 909 F.2d 705 (9th Cir. 1990), the Ninth Circuit
27 emphasized that prosecutors bear special obligations that exceed those of ordinary
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1 advocates. The prosecutor's actions in this case constitute intentional misconduct
2 that undermines the adversarial system and denies Defendant a fair trial.

3 **II. THE GOVERNMENT'S CONCEALMENT VIOLATES** 4 **DISCOVERY OBLIGATIONS AND DUE PROCESS**

5 **A. Brady Violations**

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7 Under *Brady v. Maryland*, the prosecution must disclose material evidence
8 favorable to the defense. The Ninth Circuit has consistently held that prosecutorial
9 concealment of material information violates due process. *United States v. Bagley*,
10 473 U.S. 667 (1985); *United States v. Kiszewski*, 877 F.2d 210 (9th Cir. 1989). In
11 *United States v. Deutsch*, 987 F.2d 878 (9th Cir. 1993), the court held that
12 prosecutorial misconduct itself constitutes Brady material that must be disclosed.
13 The government's concealment of these *ex parte* communications for two years
14 constitutes a willful *Brady* violation under Ninth Circuit precedent.

15
16 The undisclosed communications are material because they:

- 17 • Demonstrate prosecutorial misconduct
- 18 • Provide grounds for potential suppression of evidence
- 19 • Reveal improper investigative techniques
- 20 • Undermine the integrity of the prosecution

21 **B. Federal Rule 16 Violations**

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23 Federal Rule of Criminal Procedure 16 requires disclosure of material evidence.
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25 Prosecutors have a continuing duty to disclose under Rule 16. The government's
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1 failure to disclose these communications violates Rule 16's continuing disclosure
2 obligations.

3 **C. Giglio Implications**

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5 Under *Giglio v. United States*, 405 U.S. 150 (1972), the government must disclose
6 evidence affecting the credibility of its witnesses. In *United States v. Agurs*, 427 U.S.
7 97 (1976), and *United States v. Wallach*, 979 F.2d 912 (2d Cir. 1992), courts have
8 held that prosecutorial misconduct directly impacts witness credibility and must be
9 disclosed. The prosecutor's misconduct directly impacts the credibility of both the
10 prosecutor and the FBI agent involved.
11

12 **III. THE COURT'S SUPERVISORY POWER MANDATES DISMISSAL**

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14 Federal courts possess inherent supervisory power to dismiss prosecutions that
15 violate fundamental fairness. The Ninth Circuit has recognized this power in cases
16 involving egregious government misconduct. *United States v. Restrepo*, 930 F.2d
17 705 (9th Cir. 1991). In *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008),
18 the Ninth Circuit held that dismissal with prejudice is appropriate when prosecutorial
19 misconduct is so egregious that it undermines the integrity of the judicial process.
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21 This power is appropriately exercised when:
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- 23 1. The government's conduct shocks the conscience
- 24 2. The violation is willful and deliberate
- 25 3. Less severe sanctions would be inadequate
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1 4. The integrity of the judicial process is threatened

2 All four factors are present here. The prosecutor's deliberate *ex parte* contact with a
3 represented defendant, followed by two years of concealment, shocks the conscience
4 and threatens judicial integrity under Ninth Circuit standards.
5

6 **IV. ALTERNATIVE REMEDIES ARE INADEQUATE**

7 **A. Suppression is Insufficient**

8 While suppression of evidence obtained through these communications may be
9 appropriate, it cannot cure the fundamental constitutional violations or restore the
10 adversarial balance.
11

12 **B. Continuing Harm**

13 The government's misconduct has:
14

- 15
- 16 • Compromised defense strategy and preparation
 - 17 • Created an unfair informational advantage
 - 18 • Undermined confidence in the judicial process
 - 19 • Made a fair trial impossible
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22 **V. DISMISSAL WITH PREJUDICE IS THE APPROPRIATE REMEDY**

23 Circuit courts have reversed convictions for prosecutorial misconduct of similar
24 magnitude. In *United States v. Barker*, 546 F.2d 940 (D.C. Cir. 1976), the court
25 reversed a conviction where prosecutorial misconduct fundamentally compromised
26 the defendant's right to a fair trial. See also *United States v. Morrison*, 449 U.S. 361
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(1981); Dismissal with prejudice is warranted when prosecutorial misconduct creates such fundamental unfairness that no other remedy can cure the violation.

Dismissal with prejudice is warranted because:

1. **Willful Conduct:** The violations were deliberate and sustained under *United States v. Thompson*, 287 F.3d 1244 (10th Cir. 2002)
2. **Prejudice:** Defendant has suffered substantial prejudice.
3. **Deterrent Effect:** Only dismissal will deter future misconduct per *United States v. Payner*, 447 U.S. 727 (1980) (supervisory power explained).
4. **Judicial Integrity:** The court's integrity requires dismissal under *United States v. Hasting*, 461 U.S. 499 (1983) (supervisory power of a court does not grant the power to overturn a conviction when the constitutional error was harmless beyond a reasonable doubt).

CONCLUSION

The government's conduct in this case represents a fundamental breach of prosecutorial duty and constitutional requirements. The **deliberate** *ex parte* communications with a represented Defendant, followed by effectively two years of concealment, constitute egregious misconduct that cannot be cured through lesser sanctions.

The only appropriate remedy is dismissal of the indictment with prejudice.

WHEREFORE, Defendant respectfully requests that this Court:

1. GRANT this Motion to Dismiss;
2. DISMISS the indictment WITH PREJUDICE;
3. CONDUCT a hearing to uncover the full extent of prosecutorial misconduct;
4. GRANT such other relief as the Court deems just and proper.

Respectfully submitted,

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By:/s/ George T. Pallas
GEORGE T. PALLAS, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of Court using CM/ECF system which will send notification of such filing.

By:/s/ George T. Pallas
GEORGE T. PALLAS, ESQ